Editor's Note: Reconsideration denied by order dated November 20, 1987

DALLAS C. QUALMAN AND MARGARET G. QUALMAN

IBLA 95-43 Decided September 30, 1997

Appeal from a Decision of the Idaho State Office, Bureau of Land Management, denying an application for a corrected conveyance.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Correction of Conveyance Documents--Patents of Public Lands: Corrections

   Under section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1994), the Secretary has authority to correct errors in patent documents at any time correction is deemed necessary or appropriate. However, in correcting errors under this statutory authority, only mistakes of fact may be corrected, not mistakes of law.

APPEARANCES: Dallas C. Qualman, pro se and for Margaret G. Qualman; Kenneth M. Sebby, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Dallas C. and Margaret G. Qualman (Appellants) have appealed from a September 19, 1994, Decision of the Chief, Branch of Land Operations, Idaho State Office, Bureau of Land Management (BLM), rejecting their application for a corrected conveyance brought pursuant to section 316 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1746 (1994). In its Decision, BLM found that the Appellants had not provided the information required to perfect their application, and since there was no evidence in the documents that were provided that an error of fact was made in original Desert Land patent 165 issued in 1892 to Thomas Fitzpatrick, issuance of a corrected patent was denied. (Decision at 2.)

After losing their land represented by land patent 165 within the Boise Valley in a tax sale in 1993, Appellants filed application IDI-30800 for correction of a conveyance document with the BLM. Appellants claimed that since the act which established the Territory of Idaho protected property rights of Indian tribes so long as such rights remain unextinguished

by treaty, the land upon which the taxes were levied in the Boise Valley was still Indian land and could not be taxed. Thus, they sought a corrected conveyance document establishing that patent 165 should not reflect that the chain of title began with a conveyance to Thomas Fitzpatrick in 1892, but that the conveyance document should reflect that ownership passed to them through their Indian ancestors who had been on the land prior to statehood.

In a letter dated September 9, 1994, the Assistant Solicitor for the Environment, Lands and Minerals within the Division of Indian Affairs, U.S. Department of the Interior, advised Appellants that the United States had gained clear title to the Boise Valley without benefit of a treaty with any Indian tribe. We concur in this analysis of Indian title as it relates to the Boise Valley and adopt it as our own. The Assistant Solicitor explained:

> I need to review the importance of Indian title and how it affects who may make Indian claims. Indian title is acquired through a tribe, which is a distinct political community that sets its own rules for the lands and people under its jurisdiction. Tribes continue to have title to the lands they occupy so long as they continue to exclude others from those lands and control their use. When land is used by several groups or tribes, clear title to the land does not exist. In that case, there may be many claimants to the land, but none has title that can be conveyed.
>
> Individual Indians gain rights to land through membership (citizenship) in a tribe. Lands held by a tribe are communal property, similar in some respects to corporate property. Every member of a tribe is an owner, just as every stockholder in a corporation is an owner of the assets of a corporation. A stockholder, however, may sell his or her shares, a communal owner may not. A communal member owns because of membership in the community. Thus, individual Indians may have rights under Indian title only through a relationship with a tribe that controls the land in question. See Felix Cohen, Handbook of Federal Indian Law, at 288 (University of New Mexico Press Edition). Individual Indian members may assert occupancy rights under Indian title only in a tribal court or council with jurisdiction over those lands, not in other courts.
>
> Furthermore, one person can not clear title for another. Here, that means only a member of a tribe that owns the land in question may claim a right to occupy that land. That tribal member must make that claim in a court with jurisdiction over the land, that is, in the tribe's court.
>
> Only a tribe may bring an action in Federal court to establish Indian title to lands in question. Individuals may not

assert the interests of all Indians, tribes or other groups or bands. That was the issue before the Indian Claims Commission when it determined that no one tribe could establish exclusive use (and hence title) to the lands in the Boise Valley. The Commission described the use of the lands in that valley as follows:

> West of Twin Falls the area excluded [from the claim area] was used not only by the Western Shoshone group of Nevada and the Shoshone and Lemhi Tribes but also by the Boise Shoshone who were mixed with Northern Paiute and Bruneau Shoshone who were not part of the land-using entities [that could demonstrate exclusive occupancy of other areas within the claim] * * *.

11 Ind. Cl. Comm. 387, 414 (1962).

* * * When title is uncertain, an owner or claimant may bring a quiet title action. The party who wins may then convey title without question as to the validity of the transaction (or subsequent transactions). Once a court has cleared a title, any gaps in the chain of title are no longer relevant. Clearing title establishes that everyone must recognize that title--regardless of any gaps or previous questions.

Prior to the decision of the Indian Claims Commission, title to those patents was indeed clouded because certain Indian tribes and bands claimed never to have been compensated for loss of the Boise Valley. Evidence presented before the Commission demonstrated use of that area by many different Indian groups. However, because no single tribe could establish exclusive occupancy, the Shoshone Indians were denied compensation. That determination had the effect of clearing any cloud on patents issued by the United States. Therefore title to the patents is clear and their subsequent conveyances are valid.

(Assistant Solicitor's letter to Appellants of Sept. 9, 1994, at 1-2.)

Until the State action to sell the subject property resulting from a tax lien, Appellants were the record title owners of land described as follows:

Boise Meridian, Idaho
Ts. 1, 2, 3, 4, and 5 N., Rs. 1, 2, 3, and 4 W.
Ts. 1, 2, and 3 N., R. 1 E.
T. 2 N., R. 2 E.,
Ts. 1 and 2 N., R. 3 E.

T. 3 N., R. 2 W.,
sec. 13, S1/2NE1/4 and SE1/4;
sec. 24, N1/2.

Upon filing their application for correction of conveyance document with BLM on May, 24, 1994, Appellants were advised by the Idaho State Office, BLM, that the following missing information was required before their application could be processed:

> 1. The names, mailing addresses, and telephone numbers of all current owners of the lands involved in your application.
>
> 2. Certified copies of all patents or other conveyance documents involved in your application.
>
> 3. A statement concerning:
>
> a. The nature and extent of the error. In accordance with 43 CFR 1865.0-5, the term "error" is limited to mistakes of fact and not of law.
>
> b. The manner in which the error can be corrected or eliminated.
>
> c. The form you recommend for issuance of the correction documents(s).

(Decision at 1-2, citing 43 C.F.R. § 1865.1-2(c).)

Appellants did not provide the requested information necessary to perfect their application to BLM for a corrected conveyance document. Application IDI-30800 was thereafter rejected by the Chief, Branch of Land Operations, in his Decision of September 19, 1994. In their appeal to this Board, Appellants reassert their claim that the subject property within the Boise Valley is Indian land, and thus not subject to taxation.

[1] Section 316 of FLPMA authorizes the Secretary of the Interior to "correct patents * * * where necessary in order to eliminate errors." 43 U.S.C. § 1746 (1994). The statute, thus, invests the Secretary with discretionary authority to correct patents that contain an erroneous description of the patented land. Shoshone and Arapahoe Tribes, 102 IBLA 256, 266 (1988); Arthur Warren Jones, 97 IBLA 253, 254 (1987); Rosander Mining Co., 84 IBLA 60, 63 (1984); Elmer L. Lowe, 80 IBLA 101, 105-106 (1984); George Val Snow (On Judicial Remand), 79 IBLA 261, 262 (1984). By regulation, the term "error" is limited to mistakes of fact and not mistakes of law. 43 C.F.R. § 1865.0-5(b); Lone Star Steel Co., 101 IBLA 369 (1988); Bill G. Minton, 91 IBLA 108 (1986). The first obligation of an applicant for amendment of a land description in a patent is to establish that the land description questioned is in fact erroneous. George Val Snow (On Judicial Remand), supra. Without a clear showing of error, the Secretary is not empowered to exercise his statutory discretion to favor or disfavor the application. Id. Once the applicant has demonstrated the existence of error in the land description, his next obligation is to show that considerations of equity and justice favor the allowance of his application. Id.

Appellants have not shown that there was a mistake of fact involved in the patent in question. They have pointed to no evidence that would establish that they are members of a tribe that exercised exclusive occupancy and use of lands now at issue for which no treaty exists with the United States. Quite to the contrary, the Indian Claims Commission specifically found that no tribe exercised exclusive dominion over the Boise Valley. See Shoshone Tribe of Indians of the Wind River Reservation, Wyoming v. United States, 11 Indian Claims Commission 417, 439-446 (1962). For this reason, only the United States could patent this land. Even if the Commission had found this to be Indian land, Appellant Dallas Qualman has at various times claimed to be both a Choctaw and a Chickasaw Indian, 1/ raising further questions about the validity of Appellants' assertions. Furthermore, the Qualmans have provided no evidence that any tribal court has granted them any rights to any specific tribal lands within the Boise Valley, if such tribal lands could be shown to exist.

The 1962 determination of the Indian Claims Commission is dispositive in this case. Upon review of the BLM Decision, no evidence has been presented that would support amending the patent. We find no foundation in fact for holding that the patent's description of the 1892 conveyance is other than accurate. See Roland Oswald, 35 IBLA 79, 88-89 (1978). An application to change the legal description of a patent may not be approved where the record does not support a finding that the entryman erred in describing the land that he entered. Ben R. Williams, 57 IBLA 8 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

1/ On June 11, 1985, Appellant Dallas Qualman issued notice that he is of Choctaw descent and of his claim to land deeded from himself to himself and other Boise-Shoshoni lands for his personal use. On May 24, 1994, Dallas and Margaret Qualman filed application IDI-30800 for a corrected conveyance document. Documentation included in that application showed he is a member of the Chickasaw nation. See Ex. A to Respondent's Answer, at 12-13.